



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 28 2011

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Billy Long
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Long:

Thank you for your letter of November 3, 2011, to Administrator Lisa P. Jackson regarding the reconsideration of the 2008 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA) Reporting Rule in relation to concentrated animal feeding operations (CAFOs). You requested clarification on whether the agency has started down the rulemaking path on the 2008 CERCLA/EPCRA Reporting rule and where the agency is in that process. In addition, you expressed concern, based on selected text in the October 21, 2011, edition of the Federal Register that the EPA may have already decided the outcome of the CERCLA/EPCRA rulemaking before it has been submitted as a proposed rule for a public comment period and before the agency has had a chance to consider those comments.

On December 18, 2008, the EPA published a final rule, *CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms* (73 FR 76948) ("the 2008 Final Rule"). The 2008 Final Rule established exemptions from certain reporting requirements under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 et seq., and the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001 et seq.

On January 15, 2009, Waterkeeper Alliance, Sierra Club, the Humane Society of the United States, Environmental Integrity Project, the Center for Food Safety, and Citizens for Pennsylvania's Future (collectively, "Waterkeeper") filed a petition for review of the 2008 Final Rule. The petition challenged the exemptions under both CERCLA and EPCRA.

On March 17, 2009, the National Pork Producers Council filed its petition for review challenging a portion of the 2008 Final Rule that amended the EPCRA regulations. The two cases were consolidated. On February 11, 2009, the National Chicken Council, National Turkey Federation and U.S. Poultry & Egg Association moved to intervene on behalf of the EPA to assert their interests in the 2008 Final Rule. In order to allow the parties to participate in the D.C. Circuit Mediation Program, the case was held in abeyance from late August 2009 until October 2010. The mediation process did not resolve the issues raised by all of the parties, but it did raise issues warranting reconsideration of the 2008 Final Rule by the EPA. As such, the EPA sought and was granted a voluntary remand of the 2008 Final Rule on October 19, 2010, by the U.S. Court of Appeals for the D.C. Circuit, without vacatur of the 2008 Final Rule during the reevaluation period. The court did not impose a schedule, nor require that the agency

provide status reports to the court. The environmental petitioners indicated that they will not petition the Court for a rehearing.

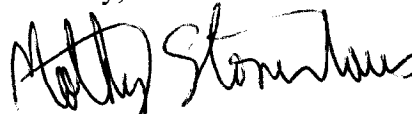
In addition to a reevaluation of the 2008 Final Rule based on the court cases, the agency also indicated that it would review the 2008 Final Rule once results were available from the agency's National Air Emissions Monitoring Study ("the Study") and the development and publication of emission estimating methodologies (*See* 40 CFR 76955, Dec. 18, 2008). The Study was conducted by an independent, non-profit organization and was overseen by the EPA through a consent agreement with the agency. Over 2,600 animal feeding operations, representing over 14,000 farms, signed up to participate in the study. The purpose of the Study was to develop emissions estimating methodologies for poultry (broilers and egg-layers), swine, and dairy animal agricultural operations. Such emissions estimating methodologies may provide the needed clarification to farmers regarding their reporting obligations under CERCLA and EPCRA. At this time, the agency is working toward finalizing the emissions estimating methodologies and will include a review by the Science Advisory Board (SAB). The EPA has initiated preliminary rulemaking activities including evaluating appropriate regulatory options for reporting under CERCLA and EPCRA.

Your second concern was related to selected text in the October 21, 2011, edition of the Federal Register that the EPA may have already decided the outcome of the CERCLA/EPCRA rulemaking before it has been submitted as a proposed rule for public comment and before the agency has had a chance to consider those comments. That text was in the National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule; proposed rule (76 FR 65431) in a section under the use of existing data sources that discussed reporting requirements under other programs (76 FR 65446). Within the quote was a sentence that read, "[t]his information collection effort may offer an alternative means of collecting data on livestock operations that would meet the Agency's Clean Water Act needs." The EPA has not decided on the outcome of the CERCLA/EPCRA rulemaking at this time and the agency will consider the comments that are submitted on any proposed rule that is published in the Federal Register for public comment.

I appreciate your interest in activities that the agency is engaging in that may impact whether CAFOs are required to report under CERCLA and EPCRA, but at this time the agency has not made a final decision on the reporting requirements.

Again, thank you for your letter. If you have further questions, please contact me or you staff may call Carolyn Levine, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-1859.

Sincerely,

A handwritten signature in black ink, appearing to read "Mathy Stanislaus", written in a cursive style.

Mathy Stanislaus
Assistant Administrator